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FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC 5602
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUCPDOC/DEPT OF COMMERCE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUEHKL/AMEMBASSY KUALA LUMPUR 2363
RUEHBK/AMEMBASSY BANGKOK 8057
RUEHGP/AMEMBASSY SINGAPORE 6102

UNCLAS JAKARTA 002064

SIPDIS

SIPDIS
SENSITIVE

DEPT FOR EAP/MTS, EB/TPP, EB/TPP/BTA
COMMERCE FOR SBERLINGUETTE
USTR FOR DKATZ
TREASURY FOR IA-BAUKOL

E.O. 12598: N/A

TAGS: [CASC](#) [EINV](#) [KIDE](#) [ECON](#) [OPIC](#) [PGOV](#) [ID](#)

SUBJECT: INDONESIA'S 2007 SUBMISSION FOR 527 REPORT ON INVESTMENT
DISPUTES AND EXPROPRIATION CLAIMS

¶1. (SBU) Below please find Post's 2007 submission pursuant to the requirements of Section 527 of the FY 94-95 Foreign Relations Authorization Act (FRAA).

¶2. (SBU) The United States Government is aware of one (1) claim of United States citizens against the Government of Indonesia (GOI). This case occurred in the power industry and was the direct result of the 1997-1998 Asian financial crisis.

(A) Claimants: A, B and C

(B) September 1997 and January 1998

(C) Case History:

(i) Claimants A, B and C are joint investors in a project company (Claimant A). Claimant A entered into contracts with Government of Indonesia-owned (GOI) companies Claimant B and Claimant C, to construct, and provide electricity from, a geothermal power plant. After the GOI cancelled the power plant project, Claimant A filed for international arbitration against Claimant B. In December 2000, an international arbitration panel in Geneva, Switzerland awarded Claimant A \$261 million plus interest for the lost investment and potential future profits. Between December 2000 and June 2003, Claimant A succeeded in freezing approximately \$600 million of liquefied natural gas (LNG) revenues deposited in Claimant B and GOI trust accounts in New York. Claimant B appealed.

(ii) In January 2004, the US District Court for the Southern District of New York defined which funds Claimant A was entitled to receive out of Claimant B's frozen bank accounts. The Court also denied the release of other frozen funds belonging to the GOI. In March 2004, the Fifth Circuit denied Claimant B's request to nullify the original arbitration award, which had grown to approximately \$294 million including interest. Claimant B indicated publicly in April 2004 that it would pay the award, but began talks with the GOI to share in that payment.

(iii) In May 2004, the Indonesian police began to summon and question former Claimant A employees and ex- Claimant B officials involved with the project. Investigators from the anti-corruption squad of the national police suggested corruption was suspected in the business dealings between Claimant B and Claimant A. Two former Claimant A employees (one US citizen and one Indonesian national) complained to Post of police intimidation. The US citizen and family departed Indonesia as a result of a police summons. The police have not made any arrests in connection with the

investigation.

(iv) In March, 2006, the U.S. Court of Appeals for the Second Circuit issued an order affirming the District Court's November 19, 2004 judgment against Claimant B. The Court of Appeals said that because the presumption that Claimant B owns the refinery funds situated in Bank of America is unrebutted, the District Court correctly held that those funds belonged to Claimant B, rather than to the GOI, and ordered the Bank of America to turn over the balance of the underlying money judgment to Claimant A.

(v) On March 16, 2007, Claimant B abandoned its attempt to have a Cayman Islands court intervene in the dispute. Claimant B's Managing Director told reporters after the verdict that the company will respect the court's decision. With accrued interest, Claimant B currently owes Claimant A \$319 million.

¶3. (SBU) Claimant A: Karaha Bodas Company (KBC); Claimant B: Pertamina; Claimant C: PLN Persero.

HUME